

**Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES**

RENEWABLE & ALTERNATIVE ENERGY PORTFOLIO STANDARDS

RPS Class II & APS Compliance Basis GUIDELINE

**for Retail Electricity Suppliers on Determining and Documenting
the Quantity of Sales to End-Use Customers under Contracts
Executed or Extended on or after January 1, 2009, for the Purpose of
Calculating the Annual RPS Class II and APS Annual Obligations**

May 12, 2010

*Pursuant to the Renewable Energy Portfolio Standard – Class II Regulation in 225 CMR 15.00
and the Alternative Energy Portfolio Standard Regulation in 225 CMR 16.00*

This Guideline clarifies the method by which Retail Electricity Suppliers¹ (“Retail Suppliers”)² shall determine and document the quantity of sales to End-Use Customers in the Commonwealth “under contracts executed or extended on or after January 1, 2009,” in order to calculate their annual compliance requirements under the Minimum Standards of RPS Class II and APS.³ This Guideline is effective for Compliance Year 2009 and thereafter. The Department of Energy Resources (“DOER”) will apply this Guideline without exception to the RPS Class II and APS Annual Compliance Filings for Compliance Year 2009 and, unless modified in the interim, for subsequent Compliance Years.

Provisions in the RPS Class II Statute and Regulations

The RPS Class II statute at M.G.L. Chapter 25A, Section 11F(d)⁴ mandates the following:

- (d) Every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources.

¹ Capitalized words in this Guideline are defined in the RPS and APS Regulations, usually found in Section 2 of each Regulation. The RPS Class II Regulation is at <http://www.mass.gov/Eoeea/docs/doer/rps/225cmr1500-052909.pdf>, and the APS Regulations is at <http://www.mass.gov/Eoeea/docs/doer/rps/225cmr1600-052909.pdf>. The Regulations also can be accessed via links from the DOER homepage at <http://www.mass.gov/doer>.

² This term covers both regulated utilities and competitive suppliers, and corresponds to Load Serving Entity (LSE) in the NEPOOL GIS Operating Rules (<http://www.nepoolgis.com>).

³ The original RPS has no such language about “under contracts executed or extended on or after January 1, 2009.” (The original RPS was established by statute in 1997, administered pursuant to regulation since 2002, and termed “RPS Class I” since 2008 under the MA Green Communities Act.) Rather, the original RPS standard (and its Class I successor) specifies “all retail electricity suppliers selling electricity to end-use customers in the commonwealth,” without regard to any contract terms. This Guideline does not apply to RPS Class I. For the Class I language, see M.G.L. c.25A, §11F(a) via the link in footnote 4.

⁴ RPS Class II and APS, along with revisions to RPS Class I, were established by Section 32 of the MA Green Communities Act of 2008. RPS Class I and II are in M.G.L. c.25A, §11F, available at <http://www.mass.gov/legis/laws/mgl/25a-11f.htm>.

The APS statute at M.G.L. Chapter 25A, Section 11F1/2(a) uses nearly the same language as the RPS Class II statute regard applicability,⁵ as follows:

Every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009 shall provide a minimum percentage of kilowatt-hour sales, as determined by the department, to end-use customers in the commonwealth from alternative energy generating sources . . .

The sections of the APS Regulation pertaining to the subjects of this Guideline are numbered in the same manner as the sections of the RPS Class II Regulations pertaining to those subjects. Accordingly, the balance of this Guideline, whenever referring to RPS Class II, applies equally to APS.

The RPS Class II Regulation in 225 CMR 15.07(1) restates the statutory language for each of the two subclasses of RPS Class II: (1) Renewable Generation and (2) Waste Energy Generation, as follows:

(1) RPS Class II Renewable Generation Minimum Standard. The total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier, under contracts executed or extended on or after January 1, 2009, shall include a minimum percentage of electrical energy sales with RPS Class II Renewable Generation Attributes. The RPS Class II Renewable Generation Minimum Standard shall be equal to 3.6 per cent.

(2) RPS Class II Waste Energy Minimum Standard. The total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier, under contracts executed or extended on or after January 1, 2009, shall include a minimum percentage of electrical energy sales with RPS Class II Waste Energy Generation Attributes. The RPS Class II Waste Energy Minimum Standard shall be equal to 3.5 per cent.

Note that RPS Class II includes two separate Minimum Standards, and that a Retail Supplier must comply with both of them for its covered retail load: 3.6% for one, plus 3.5% for the other.

The Regulation for Class II, in 225 CMR 15.09(2)(b), defines the “total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier” in the section on Annual Compliance Filings in the same manner as for Class I, thus:

(b) Electrical Energy Sales to End-use Customers by Product. Documentation of the total MWhs of each Retail Electricity Product allocated to End-use Customers in the Compliance Year, verified by an independent third party satisfactory to the Department, consistent with the Guidelines. Such allocation is defined as *the quantity of the Supplier’s Certificates Obligation that the Supplier correctly allocated or should have allocated to each of the Supplier’s Massachusetts retail subaccounts at the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, or any successor rules.* The Department shall keep product information confidential to the extent permitted by law. *[Italics and highlighting added]*

⁵ The types and vintages of eligible resources and technologies differ, of course, between the RPS Class II and the APS mandates.

This provision is further explained in a 2006 RPS Guideline,⁶ which now applies to RPS Class I, RPS Class II, and APS. Understanding the 2006 Guideline is essential for understanding how to determine the basis for RPS Class II and APS compliance.

In addition, the RPS Class II Regulation in 225 CMR 15.09(2)(g) provides that documentation of a Retail Supplier's compliance with the Minimum Standards include the following in its Annual Compliance Filing:

(g) Exempt Contracts under Minimum Standard. Identification of any contract for a specific term of years that was executed before January 1, 2009, and its terms including but not limited to, the execution and expiration dates of the contract and the annual volume of electrical energy supplied.

This provision is intended to document that the Retail Supplier based the calculation of the quantity of RECs required for meeting the annual Minimum Standard on "contracts executed or extended on or after January 1, 2009," namely on the balance of its retail load obligation under contracts that were *not* executed or extended before January 1, 2009.

Determination of RPS-Obligated Contracts and Exempt Contracts

DOER regards the RPS Class II and APS Minimum Standards to apply to all Basic Service load served by the regulated utilities.

If the execution date of a contract for providing electricity on a retail basis to a Massachusetts End-Use Customer ("Retail Customer") is on or after January 1, 2009, then the RPS Class II and APS Minimum Standards apply to the entire quantity of electricity needed to supply that Retail Customer with electricity during each Compliance Year or portion thereof during the term of the contract. The execution date is either the date on which both parties to the contract have signed it, or on a date specified in the contract as the execution date. It is not necessarily the date when the contract term begins; thus, if a contract was executed in 2008 and took effect on a specified date in 2009, it is the execution date that governs.

In the case of a Retail Supplier's contract to supply electricity to a Retail Customer that has an execution date prior to January 1, 2009, the quantity of electricity supplied to such Customer is subject to the RPS Class II and APS Minimum Standards *only if and when the contract is extended* on or after January 1, 2009. DOER regards an **extension** to have occurred at any point in time when the contract is subject to (a) a renewal provision that is based on a time or date trigger (such as "this contract shall renew itself X months after its execution date," or "on date X"), (b) mutual agreement between the parties to the contract, or (c) the imposition of a higher cost that is based on the Retail Supplier's incurring higher costs for RPS Class II or APS compliance.

If a Retail Supplier is uncertain as whether a particular pre-2009 contract has been "extended" on or after January 1, 2009, that Supplier has two choices:

- The Supplier can assume that the contract *has* been extended (and so state in the Annual Compliance Filing) and acquire the quantities of RECs, WECs, and AECs⁷

⁶ The Guideline for Retail Electricity Suppliers on the Determination of Sales to End-Use Customers for Calculating the Annual RPS Obligation, dated February 9, 2006, is available at <http://www.mass.gov/Eoeea/docs/doer/rps/rps-compliance-guideline.pdf>.

consistent with that assumption. In such case, DOER will accept that assumption without challenge.

- The Supplier can describe to DOER the particular circumstance and contract provisions and request that DOER provide a decision. However, this process must be initiated as soon as possible to allow for sufficient time for review. *DOER will accept no such requests for Compliance Year 2009 after May 24, 2010, nor after May 15 in subsequent years.*

In the case of a Retail Supplier's contract to supply electricity to a Retail Customer that has an execution date prior to January 1, 2009, and that was extended on or after January 1, 2009, consistent with the above guidance on extension, then the RPS Minimum Standard will apply to all electricity supplied as of the effective time and date of the extension.

Thus, an Exempt Contract is a contract that was executed before January 1, 2009, and the electricity supplied thereunder is *not* subject to the RPS Class II and APS Minimum Standards until such time on or after January 1, 2009, that the contract is extended in one of the manners described above.

In addition, a Retail Supplier may, if it so chooses and for whatever reason, decide *not* to treat any of its contracts as exempt, even if some arguably are Exempt Contracts per the above discussion. In such case, the Supplier must so state in its Compliance Filing (without identifying the term, counterparties, or financial information of any individual contract), and DOER will not require any documentation of such potentially Exempt Contracts, 225 CMR 15.09(2)(g) notwithstanding.

With the exception of the choice described in the previous paragraph, a Retail Supplier must be prepared to document its identification of Exempt Contracts and its decisions as to the periods of time that such contracts were exempt, as outlined in the final section of this Guideline.

Calculating the Quantities Required to Meet the RPS Class II & APS Minimum Standards

The basic equation for calculating the quantities required to meet the RPS Class II & APS Minimum Standards is the following:

$$(TLO - ECLO) \times MS = \text{MWh of Compliance Obligation}$$

where TLO = Total Load Obligation;

ECLO = Load Obligation (including line losses) attributable to providing electricity under Exempt Contracts during their periods of exemption; and

MS = **each** of the Minimum Standards under RPS Class I and APS.

The **Total Load Obligation** for each Retail Electricity Product of each Retail Supplier, as specified above in the RPS Class Regulation, 225 CMR 15.09(2)(b), and further detailed in the above-cited 2006 *Guideline for Retail Electricity Suppliers on the Determination of Sales to End-Use Customers for Calculating the Annual RPS Obligation*,⁸ is the total of the correctly

⁷ RECs are Renewable Energy Certificates, WECs are Waste Energy Certificates, and AECs are Alternative Energy Certificates. Each of these three types of electronic certificates is minted or created at the NEPOOL GIS, and each is used for compliance with the Minimum Standard of the energy portfolio standard class under which it is qualified.

⁸ See footnote 6 for the *Guideline's* URL.

allocated shares of the monthly figures provided to the Retail Supplier by the ISO-NE to the NEPOOL GIS and then recorded by the GIS in the Supplier's main account. That figure *should* be the same as the monthly Load Obligation figures provided to each Supplier by its host regulated utility companies, including Monthly Meter Adjustments. DOER regards the Load Obligation figures from the regulated utilities to be the **final** determinant of the correct figures for each of the Retail Suppliers, superior to the load that a Retail Supplier allocates to its Retail Electricity Product subaccounts at the NEPOOL GIS, unless and to the extent that a Supplier can document the correctness of a different figure to the satisfaction of DOER.

DOER does not specify exactly how a Retail Supplier must calculate the portion of its Load Obligations that is attributable to providing electricity under Exempt Contracts during their periods of exemption. However, **the following should be taken into account for each Exempt Contract during each applicable Compliance Year:**

- The contract execution and, if any, its extension dates;
- The ISO-NE Load Asset in which the contracted facility is located (since the regulated utilities report Load Obligations by Load Asset);
- The customer class of the contracted facility (which will determine the line losses);
- The number of days during which the contract is exempt from RPS Class II and APS;
- The quantity of electricity delivered under each contract during the exempt days of the year; and
- Any additional factor that the Retail Supplier regards as providing accuracy.

The Retail Supplier must make this calculation for each Exempt Contract, add them together, and then subtract from the total Load Obligation for the year. The result is the quantity of Load Obligation by which each of the annual RPS Class II and APS Minimum Standards for the year must be multiplied. Further information about the Filing is in the final section, below.

Documentation of Exempt Contracts under the RPS Class II & APS Minimum Standards

This section explains the regulatory language in RPS Class II Regulation in 225 CMR 15.09(2)(g) pertaining to documentation of the load that is exempt from the RPS Class II, which is repeated here from the first section of this Guideline:

(g) Exempt Contracts under Minimum Standard. Identification of any contract for a specific term of years that was executed before January 1, 2009, and its terms including but not limited to, the execution and expiration dates of the contract and the annual volume of electrical energy supplied.

DOER has no desire or need to receive copies of all Exempt Contracts with the Annual Compliance Filings. Furthermore, DOER will *not* request the names of the counterparties to Exempt Contracts, nor the financial information for any such contracts. Rather, as part of its determination of the load obligation attributable of its Exempt Contracts, each Retail Supplier shall prepare (but *not submit* with its Annual Compliance Filing), a list of the *types* of such contracts that it has with its Retail Customers, with a label for each type and a brief description of how each type deals with contract duration, extension or renewal, cost changes, and any other provision that would affect a determination of whether and for how long a contract should be regarded as an Exempt Contract.

Although DOER will not request any contract-specific information as part of the Annual Compliance Filing, the Filing will include an affidavit attesting to the accuracy of the data submitted for the Compliance Year of the Filing, and DOER will reserve its regulatory rights of inspection and audit in 225 CMR 15.11 and 225 CMR 16.11. DOER will expect that each Retail Supplier will consider in calculating the data provided its Filing spreadsheets (described below) all relevant and appropriate factors, as listed in the previous section of this Guideline

As part of the Annual Compliance Filing, DOER will provide a template spreadsheet on which each Retail Supplier will provide for each month of the Compliance Year the number of customers served under Exempt Contracts and the total electricity (MWh) provided to those customers, not including line losses. The information must be on a calendar month basis, and the figures from each Retail Supplier will be treated with confidentiality, a matter which will be detailed in the Instructions for the Annual Filings. The spreadsheet for reporting compliance data (currently termed Table One) will include a provision for adding line losses to the MWh data described above prior to subtracting the result from the Total Load Obligation for the Compliance Year, since that latter *does* include line losses assigned by the regulated utilities. Total Load Obligation is the starting point for calculating compliance with each of the MA energy portfolio standards. What is termed in this Guideline “Total Load Obligation” is the quantities in Column C of the current Table One in the RPS [Class I] 2008 Compliance Filing, the column titled “Total Electricity Sold in CY 2008 for each Retail Electricity Product [as defined in 225 CMR 14.09(2)(b)].”

In addition to data for 2009, DOER will request in the new template spreadsheet (described at the beginning of the previous paragraph) electricity delivery projections under Exempt contracts for 2010 through 2014, which will enable DOER to provide to all market participants aggregated projections to facilitate intelligent planning and market activity.